IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 637 OF 2005

Mr. Nandu Vora & Anr. .. Petitioner

V/s

1 Mrs Mani Narayan & Anr. .. Respondents

Ms. T. Dalvi i/b Pillai & Co. for petitioner
Shri Prakash Naik for respondent No.1

Coram : V.M. Kanade, J.
Dated : 05/05/2005.

P.C. :-

1 Heard the learned counsels for the petitioner and the respondent No.1.

2 The petitioner is challenging the order of issuance of process by the Metropolitan Magistrate,40th Court,Girgaum, Mumbai. The respondent No.1 filed a complaint in which she alleged that she is a member of Empire Guide Co-operative Housing Society and is occupying a flat No.21 on the sixth floor of the building. It is stated that she is also in possession of commercial workshop/show-room in the building on the ground floor which was purchased by her from the builder. It is stated that the complainant is sculptress by profession and is receipient of “Padmashree” from the Government of India.

She has stated

that the society has issued a share certificate and has been charging the bills from time to time which the complainant has paid regularly. She has further stated that a licence was issued under the shops and establishments Act on 27/08/1984. It is alleged in the complaint that on 30/11/2004 at about 4 p.m. the water supply of her studio premises was suddenly stopped. A complaint was made by her and thereafter the complaint was registered in the plumber complaints book. However, she was informed that water supply would not be connected without permission of the Chairman of Society and the Managers, accused No.1 and 2 herein.A letter was written to the Chairman to resume the water supply. However, the water supply to studio premises was not restored. In the paragraph-8, there are averments to that effect that this was deliberate, intentional and willful disconnection and intention of the accused is malafide. A complaint was lodged with Malbar Hill Police Station . However, the complaint was not registered by the police. Thereafter, the complaint was addressed to the Assistant Commissioner, Gamdevi Police Station for necessary action. Inspite of that, no action was taken by the police against the society. It is alleged that disconnection of water supply to studio premises was done by the society with an ulterior motive. But though the complainant was paying necessary water charges for the studio premises, the water connection

was not restored. On the complaint, an inquiry was made by the Metropolitan Magistrate and process issued

after passing a reasoned order. It appears that a civil suit was also filed by the petitioner in the City Civil Court at Mumbai. The relief of interim injunction was refused by the trial court. Against which Appeal from order was filed in this court and this court had also directed that water supply should be restored. It appears that inspite of said order passed by this court, the water supply has not been restored till date. All the questions and submission made by the learned counsel appearing on behalf of the petitioner cannot be decided at this stage. The question whether the water connection was illegal or legal is a question of fact which can be determined only during trial. Thus, I do not see any reason to interfere with the order passed by the Metropolitan Magistrate. Criminal writ petition accordingly is dismissed.

(V. M. Kanade,J.)